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FREEDOM OF INFORMATION



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Mark Dumas and the
Connecticut State Police Union,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-613

Sgt. James Canon, Labor Relations Unit, State
of Connecticut, Department of Emergency
Services and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,
Respondent(s)

June 21, 2012

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, July 11, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE June 29, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE June 29, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Mark Dumas
Stephen Sarnoski, AAG

6/21/12/FIC# 2011-613/Trans/wrbp/LFS/CAL

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Mark Dumas and the Connecticut State
Police Union,

Complainant

against

Docket #FIC 2011-613

Sgt. James Canon, Labor Relations Unit,
State of Connecticut, Department of
Emergency Services and Public
Protection; and State of Connecticut,
Department of Emergency Services,

Respondents

June 20, 2012

The above-captioned matter was heard as a contested case on March 13, 2012, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The respondents moved to dismiss the complaint as frivolous, pursuant to §1-206(b)(2), G.S. In light of the Commission's conclusion herein that the respondents violated the FOI Act, the Commission denies the respondents' motion.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that on October 28, 2011, the complainants requested a copy of a certain e-mail.
3. It is found that on November 8, 2011, the respondents denied the complainants' request, claiming that §§1-210(b)(9) and (10), G.S., exempt the record from disclosure.
4. By letter filed November 8, 2011, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with the record they requested. The complainants requested the imposition of a civil penalty.
5. Section 1-200(5), G.S., provides:

Public records or files means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides, in relevant part:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to ... receive a copy of such records in accordance with the provisions of section 1-212.

7. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. It is concluded that the record requested by the complainants is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. The respondents claim §1-210(b)(9) and (10), G.S., exempt the records from mandatory disclosure.

10. Section 1-210(b)(9), G.S., provides in relevant part that nothing in the FOI Act shall be construed to require the disclosure of "records, reports and statements of strategy or negotiations with respect to collective bargaining. . . ."

11. Section 1-210(b)(10), G.S., exempts "communications privileged by the attorney-client relationship...."

12. Established Connecticut law defining the attorney-client privilege governs the applicability of the exemption contained in §1-210(b)(10), G.S. Such law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

13. Section 52-146r(2), G.S., defines "confidential communications" as:
all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by

the government attorney in furtherance of the rendition of such legal advice. . . .

14. It is found that the respondents provided the requested e-mail to the complainants on the day of the hearing in this matter, shortly before the hearing's commencement.

15. The complainants do not dispute that the substance of the e-mail concerns strategy with respect to collective bargaining and confidential communications privileged by the attorney-client relationship.

16. It is found that the complainants informed the respondents at some point prior to the hearing in this matter that they were interested in receiving the "headers" to the e-mail; particularly, the time that the e-mail was sent.

17. The complainants contend that the record of the time in the e-mail's "Sent" heading was not exempt from disclosure pursuant to either of the exemptions claimed by the respondents.

18. The complainants allege that the respondents violated the FOI Act by withholding the e-mail in its entirety until the day of the hearing, instead of redacting the exempt portion and promptly disclosing the remainder.

19. It is found that the recorded time that the e-mail was sent does not reveal strategy or negotiations with respect to collective bargaining, within the meaning of §1-210(b)(9), G.S., and it also does not reveal confidential communications privileged by the attorney-client relationship, within the meaning of §1-210(b)(10), G.S.

20. "The redaction of portions of a record has been recognized from the creation of the FOI Commission as a partial disclosure remedy under FOIA ... When portions of a document are subject to an exemption, those portions are redacted, and the remainder are to be disclosed." (Citations omitted.) Commissioner, Department of Correction v. Freedom of Information Commission, CV84016692S, Superior Court of Connecticut, Judicial District of New Britain at New Britain, 2009 Conn. Super. LEXIS 3092, *12 (November 17, 2009); Ottochian v. Freedom of Information Commission, 221 Conn. 393, 397 (1992) (redacting exempt information from otherwise disclosable record supports general policy of openness and narrow construction of exemptions).

21. It is concluded that the respondents violated the FOI Act by withholding the e-mail in its entirety after learning that the complainants' sought the e-mail's header, rather than redacting the exempt portion and disclosing the remainder.


22. It is found that although the respondents ultimately provided the entire e-mail to the complainants, they did not provide the non-exempt portion in a prompt manner.

23. Accordingly, it is concluded that the respondents violated the FOI Act by failing to promptly disclose the non-exempt portions of the e-mail to the complainants.

24. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondents.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall strictly comply with the promptness provisions of §§1-210(a) and 1-212(a), G.S.


Lisa Fein Siegel
as Hearing Officer

FIC2011-613/HOR/LFS/052912